



Attorneys at Law

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 7/17/2023

Steven M. Swirsky  
t 212.351.4640  
f 212.878.8646  
SSwirsky@ebglaw.com

July 14, 2023

**VIA ECF**

Hon. Analisa Torres  
United States District Judge  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

Re: *Vidal Solar et al. v. Fresh Direct, LLC et al.*

Case No. 1:20-cv-03431 (AT)

**Letter Motion-On Consent**

Dear Judge Torres:

Our firm represents the Defendants Fresh Direct, LLC and Fresh Direct Holdings, Inc. in the above referenced action. By Order dated March 14, 2023, the Court granted Plaintiffs' motion for an Order preliminarily approving the Class Settlement. (ECF Doc. # 74). Pursuant to the Class Settlement and this Court's Order, the original deadline for notice distribution to the Class Members was 60-days after preliminary approval of the Class Settlement (which was May 15, 2023) and the Court had set July 5, 2023 at 1:30 pm as the original scheduled date for the Fairness Hearing.

By Order dated May 16, 2023, the Parties jointly requested an extension of the date to provide notice to the Class and an adjournment of the Fairness Hearing because Defendants required the continued assistance of former third-party background check vendors to supply information concerning the identities and contact information of certain potential Class Members covering portions of the years 2015 and 2016. The Court granted this joint request, extending the deadline for notice to the putative Class to June 15, 2023 and Fairness Hearing to September 5, 2023. (ECF Doc. # 76).

Hon. Analisa Torres  
United States District Judge  
July 14, 2023  
Page 2

As of today's date, Defendants have supplied Plaintiffs' counsel and the Class Administrator with what they believe to be the complete Class List, which Class List includes information received from the third-party vendors. The Class Administrator was prepared to send the notice to all potential Class Members on July 13, 2023.

However, pursuant to the parties' settlement agreement, putative Class Members have 60-days from the date of the notice to submit a Claim Form, object to the settlement, or opt-out, but the Fairness Hearing has been scheduled for September 5, 2023 (prior to the expiration of this 60-day period). The Parties respectfully request that the Fairness Hearing be adjourned to a date on or after October 5, 2023.

Should the Fairness Hearing take place prior to the expiration of the 60-day period, the Parties will not be able to determine the full scope of the Class, and putative Class Members may not have yet submitted a Claim Form, objected to the settlement, or opted-out.

Accordingly, we respectfully request an adjournment of the Fairness Hearing to a date on or after October 5, 2023. Consistent with the Court's prior order, Plaintiffs will be prepared to file their request for final approval of the settlement, along with requests for attorneys' fees and costs, and service awards, no later than fifteen days before the Fairness Hearing. (*See* ECF Dkt. # 76.)

We thank you for your attention to this matter.

Respectfully,

/s/ Steven M. Swirsky

GRANTED. The fairness hearing scheduled for September 5, 2023, is ADJOURNED to **October 17, 2023**, at **1:00 p.m.** The hearing will proceed telephonically. At the time of the hearing, the parties are directed to dial (888) 398-2342 or (215) 861-0674, and enter access code 5598827.

At the hearing, the Court shall determine whether to grant final certification of the settlement class, and final approval of the Class Settlement and plan of allocation. *See* ECF Nos. 74, 76. At the fairness hearing, the Court shall also consider any petition that may be filed for the payment of attorney's fees and costs/expenses to class counsel, and any service payments to be made to Plaintiffs. Class counsel are reminded that they shall file their petition for an award of attorney's fees and reimbursement of costs/expenses and the petition for an award of service payments no later than fifteen days prior to the fairness hearing. *See id.*

SO ORDERED.

Dated: July 17, 2023  
New York, New York

  
\_\_\_\_\_  
ANALISA TORRES  
United States District Judge